

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

LYNNETT MYERS, ET AL.

Plaintiffs,

v.

MEMORIAL HEALTH SYSTEM
MARIETTA MEMORIAL HOSPITAL, ET
AL.,

Defendants.

Case No. 2:15-cv-02956-ALM-CMV

Judge Algenon L. Marbley

Magistrate Judge Chelsey M. Vascura

**[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

This matter having come before the Court on Plaintiff's motion for preliminary approval of the proposed class action settlement of the above-captioned case (the "Action") between Plaintiffs Lynnett Myers, Carol Butler, and Arva Lowther, individually and on behalf of the Settlement Class ("Plaintiffs"), and Defendants Memorial Area Health Care, Inc. d/b/a Memorial Health System, Marietta Memorial Hospital, Selby General Hospital, J. Scott Cantlay, and Eric Young ("Defendants") (collectively, the "Parties") as set forth in the Parties' Settlement Agreement and Release (the "Agreement," which memorializes the "Settlement"). Having duly considered the papers, and good cause having been shown, THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. The Court has jurisdiction over the subject matter of the Action, the Parties, and all Settlement Class Members.

2. Unless defined herein, all defined terms in this Order shall have the meanings ascribed to them in the Agreement.

3. The Court has conducted a preliminary evaluation of the Settlement as set forth in the Agreement for fairness, adequacy, and reasonableness. Based on that evaluation, the Court finds that: (i) the Agreement is fair, reasonable, and adequate, and within the range of possible approval; (ii) the Agreement has been negotiated in good faith at arms'-length between experienced attorneys familiar with the legal and factual issues of this case; and (iii) with respect to the forms of notice of the material terms of the Agreement to Settlement Class Members for their consideration and reaction, that notice is appropriate and warranted. Therefore, the Court finds preliminarily that it is likely to be able to approve the proposed Settlement pursuant Rule 23(e)(2) of the Federal Rules of Civil Procedure and grants preliminary approval of the Settlement.

4. The Court approves the proposed plan for giving notice to the Settlement Class (i) directly (via Mail Notice using postcards); and (ii) via Website Notice by establishing a Settlement Website (collectively, the "Class Notice"), as more fully described in the Agreement. The Class Notice, in form, method, and content, complies with the requirements of Rule 23 and due process, and constitutes the best notice practicable under the circumstances. The Court hereby directs the Parties and the Settlement Administrator to complete all aspects of the Class Notice no later than [DATE], in accordance with the terms of the Agreement.

5. On [DATE], in Courtroom 323 of the Joseph P. Kinneary U.S. Courthouse, 85 Marconi Boulevard, Columbus, Ohio, or at such other date, time and place (including by videoconference) later set by Court Order, this Court will hold a Final Approval Hearing on the fairness, adequacy and reasonableness of the Agreement and to determine whether (i) final

approval of the Settlement embodied by the Agreement should be granted, and (ii) Plaintiffs' application for attorneys' fees and expenses, and incentive award to the Class Representative, should be granted, and in what amount. No later than **[DATE]**, which is 60 days after the Notice Deadline, Class Counsel must file papers in support of their application for attorneys' fees and expenses, and the incentive award to the Class Representative. No later than **[DATE]**, which is 10 days before the Final Approval Hearing, Plaintiffs must file papers in support of final approval of the Settlement and respond to any written objections. Defendants may (but is not required to) file papers in support of final approval of the Settlement, so long as it does so by no later than **[DATE]**. The Court may continue the Final Approval hearing from time-to-time without further notice to the Settlement Class Members.

6. The Settlement Administrator will file with the Court by no later than **[DATE]**, which is ten (10) Days prior to the Final Approval Hearing, proof that Notice was provided to the appropriate State and federal officials pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715.

7. Settlement Class Members who wish to either object to the Settlement or request to be excluded from it must do so by the Objection Deadline and Opt-Out Deadline of **[DATE]**, which are both sixty (60) Days after the Notice Deadline. Settlement Class Members may not both object and opt out. If a Settlement Class Member submits both a Request for Exclusion and an objection, the Request for Exclusion will be controlling.

8. To submit a Request for Exclusion (or opt-out), Settlement Class Members must follow the directions in the Class Notice and send a compliant request to the Settlement Administrator at the address designated in the Class Notice by the Opt-Out Deadline. In the Request for Exclusion, the Settlement Class Member must state his or her full name and address,

and contain the words “I elect to exclude myself from the hospital wage and hour settlement” or other similar words or language. No Request for Exclusion will be valid unless all of the information described above is included. No Settlement Class Member, or any person acting on behalf of or in concert or participation with that Settlement Class Member, may exclude any other Settlement Class Member from the Settlement Class. The Claims Administrator may contact any individual who purports to submit a Request for Exclusion or opt-out if there is any ambiguity regarding the intent manifested in the filing.

9. If a timely and valid Request for Exclusion or opt-out is made by a member of the Settlement Class, then that person will not be a Settlement Class Member, and the Agreement and any determinations and judgments concerning it will not bind the excluded person.

10. All Settlement Class Members who do not opt out in accordance with the terms set forth in the Agreement will be bound by all determinations and judgments concerning the Settlement.

11. To object to the Settlement, Settlement Class Members must follow the directions in the Class Notice and file a written Objection with the Court and mail to Class Counsel and Defense Counsel as set forth in the Agreement by the Objection Deadline. In the written Objection, the Settlement Class Member must state his or her name, address, and telephone phone number, and a statement of whether the Settlement Class Member objecting intends to appear at the Final Approval Hearing, either with or without counsel. Any documents that the Settlement Class Member wishes the Court to consider must also be attached to the Objection. No Objection will be valid unless all of the information described above is included. The right to object to this Settlement must be exercised individually by an individual Settlement Class Member, not by the act of another person acting or purporting to act in a representative capacity.

12. Any Settlement Class Member who fails to timely object to the Settlement in the manner described in the Class Notice and in accordance with this Order, shall not be permitted to object to the Settlement at the Final Approval Hearing, shall be foreclosed from seeking any review of the Settlement or Agreement by appeal or other means, shall be deemed to have waived his or her objections, and shall be forever barred from making any such objections in the Action.

13. All members of the Settlement Class, except those members of the Settlement Class who submit timely Requests for Exclusion, will be bound by all determinations and judgments in the Settlement, whether favorable or unfavorable to the Settlement Class.

14. Accordingly, the following are the deadlines by which certain events must occur:

[DATE] [no later than 45 Days after the date of this order]	Notice Deadline (Settlement Administrator shall send Mail Notice by this date and shall establish the Settlement Website by no later than the posting of the Mail Notice).
[DATE] [no later than 60 Days after the Notice Deadline]	Deadline for Class Members to file Objections or submit Requests for Exclusion.
[DATE] [60 Days after the Notice Deadline]	Deadline for Defendants to file declaration(s) of CAFA Notice.
[DATE] [no later than 60 Days after the Notice Deadline]	Deadline for Plaintiff's Motion for Attorneys' Fees and Incentive Award.
[DATE] [no later than 90 Days after the Notice Deadline]	Deadline for Class Members to submit Claims.

<p>[DATE]</p> <p>[10 Days After the Deadline for Class Members to Submit Claims]</p>	<p>Deadline for Settlement Administrator to provide Class Counsel with a declaration that Class Notice has been disseminated, identifying the number of Requests for Exclusion, and the number of Claims received to date.</p>
<p>[DATE]</p> <p>[no later than 10 days before the Final Approval Hearing]</p>	<p>Deadline for Plaintiff to file Motion and Memorandum in Support of Final Approval, including responses to any Objections.</p>
<p>[DATE], at [TIME]</p> <p>[Not earlier than 110 Days after Notice Deadline]</p>	<p>Final Approval Hearing</p>

15. The Agreement and any and all negotiations, documents, and discussions associated with it, will not be deemed or construed to be an admission or evidence of any violation of any statute, law, rule, regulation, or principle of common law or equity, or of any liability or wrongdoing, by Defendants, or the truth of any of the claims, and evidence relating to the Agreement will not be discoverable or used, directly or indirectly, in any way, whether in the Action or in any other action or proceeding, except for purposes of demonstrating, describing, implementing, or enforcing the terms and conditions of the Agreement, this Order, and the Judgment.

16. If the Settlement is not approved or consummated for any reason whatsoever, the Settlement and all proceedings in connection with the Settlement will be without prejudice to the right of Defendants or Plaintiffs to assert any right or position that could have been asserted if the Agreement had never been reached or proposed to the Court. In such an event, the Parties will return to the *status quo ante* in the Action.

17. Pending the final determination of whether the Settlement should be approved, each Settlement Class Member is hereby enjoined from filing any class action, individual action, or attempting to amend an existing action to assert any claims which would be released pursuant to the Settlement Agreement. If the Settlement is terminated or final approval does not for any reason occur, the injunction will be immediately terminated.

18. Pursuant to the Agreement, CPT Group is hereby appointed as Settlement Administrator and shall be required to perform all the duties of the Settlement Administrator as set forth in the Agreement and this Order.

19. Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Agreement, including making, without further approval of the Court, minor changes to the form or content of the Class Notice and Claim Form, and other exhibits that they jointly agree are reasonable and necessary. The Court reserves the right to approve the Agreement with such modifications, if any, as may be agreed to by the Parties without further notice to the Settlement Class Members.

SO ORDERED.

DATED: _____, 2021

HON. Algenon Marbley